00 76 JUN 16 2000

OFFICE OF THE CLERK

No. _____

# IN THE
# SUPREME COURT OF THE UNITED STATES

MICHAEL SHAWN TAYLOR,
*Petitioner*,

v.

RANCHO SANTA BARBARA, a California General Partnership, and its general partners, et al.,
*Respondents*.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

ROBERT O. ANGLE *
ANGLE, CARLSON, GOLDRICK
& ROBERTS
200 EAST CARRILLO STREET
SUITE 310
SANTA BARBARA, CA 93101
(805) 963-7400

*Counsel for Petitioner*

* Counsel of Record

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

67pp

## QUESTIONS PRESENTED

1. Did Congress have constitutional authority to enact provisions of the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995 which impose age restrictions governing the sale or rental of housing by private citizens?

2. If Congress has constitutional authority to prohibit discrimination based on age, i.e., discrimination against families with children, may it exclude from its proscription housing which is sold or rented exclusively to persons age 55 and older, without violating younger persons' constitutional right to equal protection of the law?

3. May the State of California permit age discrimination in mobilehome housing while at the same time prohibiting age discrimination in all other forms of ordinary housing, without violating its citizens' constitutional right to equal protection of the law?

## PARTIES TO THE PROCEEDING

### Petitioner

The petitioner is Michael Shawn Taylor, an individual suing in his own behalf. Petitioner has no corporate affiliations.

### Respondents

The respondents are Rancho Santa Barbara, a general partnership, and its partners, Cuervo Corp., a California Corporation; Kenneth E. Eckert, and Lorena J. Eckert, Co-Trustees of the Lorena J. Eckert Trust; Warren J. Howland, Trustee of the Warren J. Howland Trust; Margaret S. Howland; and Frederick Rice, Trustee of the Frederick Rice Trust.

## TABLE OF CONTENTS

QUESTIONS PRESENTED . . . . . i

PARTIES TO THE PROCEEDING . . . . . ii

TABLE OF CONTENTS . . . . . iii

TABLE OF AUTHORITIES . . . . . vi

OPINIONS BELOW . . . . . 1

JURISDICTION . . . . . 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED . . . . . 2

STATEMENT OF THE CASE . . . . . 8

ARGUMENT FOR GRANTING CERTIORARI . . . . . 11

ARGUMENT

1. CONGRESS LACKS CONSTITUTIONAL AUTHORITY TO ENACT LEGISLATION IMPOSING AGE RESTRICTIONS APPLICABLE TO THE PRIVATE SALE OR RENTAL OF HOUSING. THEREFORE, THE PROVISIONS OF THE FAIR HOUSING ACT, AS AMENDED, AUTHORIZING EXCLUSION OF PERSONS UNDER AGE 55 FROM HOUSING ARE INVALID . . . . . 12

2. CONGRESSIONAL LEGISLATION WHICH ALLOWS ORDINARY HOUSING TO BE RESERVED EXCLUSIVELY FOR PERSONS AGE 55 AND OLDER IMPERMISSIBLY DISCRIMINATES AGAINST PERSONS UNDER AGE 55, DENYING THEM EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE FIFTH AMENDMENT . . . . . 17

3. CALIFORNIA STATUTES WHICH PERMIT AGE DISCRIMINATION IN MOBILEHOME HOUSING WHILE PROHIBITING IT IN ALL OTHER FORMS OF ORDINARY HOUSING VIOLATE THE FOURTEENTH AMENDMENT . . . . . 3

CONCLUSION . . . . . 24

APPENDIX

**Appendix A**
Ninth Circuit Opinion, March 21, 2000 . . . . . 1a

**Appendix B**
District Court [Amended] Order Granting Defendant's 12(b)(6) Motion to Dismiss, June 19, 1998 . . . . . 12a

District Court [Amended] Judgment [FRCP 12(b)(6), 58], June 19, 1998 . . . . . 21a

**Appendix C**

Text of Federal Statutes: . . . . . 23a

42 U.S.C. § 3603

42 U.S.C. § 3604

42 U.S.C. § 3607

## TABLE OF AUTHORITIES

AUTHORITY PAGE

**Cases**

*Colony Cove Associates v. Brown*
(1990), 220 Cal.App.3d 195;
[269 Cal.Rptr. 234] . . . . . 9

*Fillilove v. Kreps,*
584 F.2d 600 (2nd Cir. 1978) . . . . . 20

*Johnson v. Robison,*
415 U.S. 361; 95 S.Ct. 1160;
39 L.Ed.2d 389 (1974) . . . . . 18

*Kimel v. Florida Bd. of Regents,*
528 U.S. ___; 120 S.Ct. 631;
145 L.Ed.2d 522 (2000) . . . . . 11, 15, 18

*Schmidt v. Superior Court*
(1989) 48 Cal.3d 370, [256 Cal.Rptr.
750; 769 P.2d 932] . . . . . 21, 22

*United States v. Grooms,*
348 F.Supp. 1130 (USDC MD Fla. 1972) . . . . . 17

*United States v. Morrison*
(Nos. 99-5 and 99-29, May 15, 2000),
529 U.S. ___; 120 S.Ct. 1740;
___ L.Ed.2d ___ (2000) . . . . . *passim*

*Weinberger v. Weisenfeld,*
420 U.S. 636; 95 S.Ct. 1225;
43 L.Ed.2d 514 (1975) . . . . . 18

**Statutes**

U.S. Const., art. I, § 8, cl. 3 . . . . . 7, 13
U.S. Const., Fifth Amendment, due process cl. . . . *passim*
U.S. Const., Fourteenth Amendment,
§§ 1 and 5 . . . . . *passim*
26 U.S.C. § 72(T)(2)(A)(i) . . . . . 19
26 U.S.C. § 408(d)(1) . . . . . 19
28 U.S.C. § 1254(1) and 2106 . . . . . 1
28 U.S.C. § 2403(a) & (b) . . . . . 1
42 U.S.C. § 416(1)(A) . . . . . 19
42 U.S.C. § 416(1)(E) . . . . . 19
42 U.S.C. § 1395o(2) . . . . . 19
42 U.S.C. § 3602 . . . . . 2, 5
42 U.S.C. § 3603 . . . . . 2, 15
42 U.S.C. § 3604 . . . . . 2
42 U.S.C. § 3607 . . . . . *passim*
Fair Housing Amendments Act of 1988 . . . . . *passim*
Housing For Older Persons Act of 1995
(Public Law 104-76) . . . . . *passim*
Federal Rule of Civil Procedure 12(b)6 . . . . . 10
California Civil Code § 51.2 . . . . . 6, 23
California Civil Code § 798.76 . . . . . 6, 11, 21, 24

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 206 F.3d 932 (9th Cir. 2000). A copy of the opinion is included in the Appendix at Appendix A, pages 1a through 11a.

The opinion of the United States District Court for the Central District of California is not published. It is entitled, "[Amended] Order Granting Defendants' 12(b)(6) Motion to Dismiss," and a copy of that document is included in Appendix B at pages 12a through 20a. That court's "[Amended] Judgment [FRCP 12(b)(6), 58]" is included in Appendix B at pages 21a through 22a.

## JURISDICTION

The decision and opinion of the United States Court of Appeals for the Ninth Circuit was issued and filed on March 21, 2000. This Petition for Writ of Certiorari is filed within 90 days after the filing of that opinion and decision. This Court's jurisdiction is invoked pursuant to 28 United States Code §§ 1254(1) and 2106.

The provisions of 28 United States Code §§ 2403(a) and (b) apply to this case, because the constitutionality of an Act of Congress, and the constitutionality of a statute of the State of California, are drawn into question.

Counsel for plaintiff Michael Shawn Taylor filed in the District Court a "NOTICE OF CHALLENGE TO CONSTITUTIONALITY OF STATE STATUTE AND OF ACT OF CONGRESS BY WITHIN ACTION (Rule 24(c), FRCP; 28 U.S.C. § 2403)" on March 30, 1998.

Neither the United States Court of Appeals nor the United States District Court certified to the Attorney General of the United States the fact that the constitutionality of an Act of Congress was drawn into question in this case.

Neither the United States Court of Appeals nor the United States District Court certified to the Attorney General of the State of California the fact that the constitutionality of a statute of that State was drawn into question in this case.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. **Federal Statutes.** The federal statutory provisions involved in this proceeding are part of the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988 and by the Housing for Older Persons Act of 1995 (Public Law 104-76). The statutes involved are codified in 42 United States Code, §§ 3602, 3603, 3604 and 3607. Sections 3603, 3604 and 3607 are lengthy, and therefore they are reproduced verbatim in Appendix C (in accordance with Rule 14.1(f)). Relevant excerpts from the statutes are:

1. 42 United States Code §§ 3604(a), (b), (d) and (e), part of the Fair Housing Act adopted in 1968, as amended by the Fair Housing Amendments Act of 1988. The language added by the 1988 Act is italicized:

> "[I]t shall be unlawful—
>
> "(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person

because of race, color, religion, sex, *familial status*, or national origin."

"(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, *familial status*, or national origin."

"(d) To represent to any person because of race, color, religion, sex, *handicap, familial status,* or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."

"(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, *handicap, familial status,* or national origin."

2. 42 United States Code § 3607(b) (2)(A), (B) and (C), adopted as part of the Fair Housing Amendments Act of 1988, **before** sub-section (2)(C) was amended by the Housing for Older Persons Act of 1995 (Public Law 104-76):

"(b)(2) [H]ousing for older persons means housing—

"(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

"(B) intended for, and solely occupied by persons 62 years of age or older; or

"(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors: (i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide housing opportunities for older persons; and (ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older."

3. 42 United States Code § 3607(b) (2)(A), (B) and (C), **after** amendment by the 1995 Act (Pubic Law 104-76):

"(b)(2) [H]ousing for older persons means housing—

"(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program; or

"(B) intended for, and sole occupied by, persons 62 years of age or older, or

"(C) intended and operated for occupancy by persons 55 years of age or older, and—

"(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

"(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

"(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

"(I) provide for verification by reliable surveys and affidavits; and

"(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification."

4. 42 United States Code § 3602(k):

"As used in this title—

"(k) 'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with—

"(1) a parent or another person having legal custody of such individual or individuals; or

"(2) the designee of such parent or other person having such custody, with the

written permission of such parent or other person."

B. **State Statutes.** The state statutes involved in this proceeding are:

1. California Civil Code § 798.76:

"The management [of a mobilehome park] may require that a prospective purchaser [of a mobilehome to be located in the park] comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulation complies with the federal Fair Housing Act, as amended by Public Law 104-76."

2. California Civil Code § 51.2(a):

"(a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. Where accommodations constructed before February 8, 1982, meet the criteria for senior

citizen housing specified in Section 51.4, a business establishment may establish and preserve that housing for senior citizens until January 1, 2000, in accordance with Section 51.4."

C. **Constitutional Provisions**. The following provisions of the Constitution of the United States are involved in this proceeding:

1. U.S. Constitution, article I, section 8, clause 3 (Commerce Clause):

> "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

2. The Fifth Amendment to the Constitution:

> "No person shall . . . be deprived of life, liberty or property without due process of law; . . ."

3. The Fourteen Amendment to the Constitution, section 1:

> " . . . [N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

4. The Fourteenth Amendment to the Constitution, section 5:

"The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

## STATEMENT OF THE CASE

Michael Shawn Taylor purchased a mobilehome located in Rancho Santa Barbara, a mobilehome park located in Santa Barbara, California, owned by the Rancho Santa Barbara partnership. The park rents spaces to owners of mobilehomes. In order for Mr. Taylor to live in his mobilehome, he was required to apply to the park management for a rental agreement for the space upon which his mobilehome was situated. The application requested his age, and he truthfully replied that he was age 41.

Rancho Santa Barbara restricts occupancy of mobilehomes in its park exclusively to persons age 55 or older. That restriction is contained in park rules published and enforced by the park management.

Mr. Taylor's application for a rental agreement was denied on the ground that he did not meet the minimum age required by the park rules.

The Rancho Santa Barbara mobilehome park does not have or provide any facilities or services specifically designed to meet social or physical needs of older persons, nor does it provide anything to meet social and physical needs of its age 55 and older residents which differ from those required to meet social and physical needs of younger persons.

The park's age rule is authorized by section 798.76 of the California Civil Code, which provides that the

management of a mobilehome park may limit residency based on age, if the age restriction complies with the federal Fair Housing Act, as amended by Public Law 104-76. The federal provision is contained in 42 United States Code § 3607(b)(2)(C). That section permits a seller or landlord of residential housing to sell or rent solely to persons age 55 and older. The housing is not required to be designed to meet any special physical needs of the residents, nor is it required to be accompanied by any programs to meet social needs of the residents.

Section 51.2 of the California Civil Code, on the other hand, prohibits discrimination in the sale or rental of all housing in California on the basis of age, with certain exceptions for "specially designed accessible housing for senior citizens" not relevant here. California courts have held, however, that section 798.76 operates as an exception to the overall proscription of section 51.2 (*Colony Cove Associates v. Brown* (1990) 220 Cal.App.3d 195, 199 [269 Cal.Rptr. 234], which means that age discrimination is prohibited in California for all forms of ordinary housing except mobilehome housing, but age discrimination is permitted in mobilehome housing.

Mr. Taylor's complaint in the district court alleges the foregoing facts, and asserts:

1. The California statutory scheme which prohibits age discrimination in all ordinary housing other than mobilehomes, while at the same time permitting age discrimination against persons under age 55 in mobilehome parks, is not rationally related to any legitimate governmental objective, and therefore is unconstitutional under the Fourteenth Amendment to the United States Constitution.

2. The provisions of the federal Fair Housing Act, as amended, which permits discrimination against persons under age 55 in ordinary housing is not rationally related to any legitimate governmental objective, and therefore is unconstitutional under the Fifth Amendment to the United States Constitution.

Defendants' motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure was granted by the district court, and the ensuing judgment was affirmed by the United States Court of Appeals for the Ninth Circuit by a published opinion filed March 21, 2000. The district court and the Ninth Circuit court held that the age discrimination provisions of the federal Fair Housing Act, as amended, are not unconstitutional under the Fifth Amendment, and that the California statutory scheme is not unconstitutional under the Fourteenth Amendment.

Subsequent to the filing of the Ninth Circuit opinion, this Court issued its decision in *United States v. Morrison* (consolidated with *Brzonkala v. Morrison*) (Nos. 99-5 and 99-29, May 15, 2000), 529 U.S. ___ ; 120 S.Ct. 1740; ___L.Ed.2d ___. The legal analysis of the majority and concurring opinions in that case support a further and more basic contention that Congress exceeded its constitutional authority when it adopted legislation regulating age discrimination in private housing, contained in the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995, and therefore that those provisions are invalid.

Specifically, the provisions of the 1988 and 1995 Acts that proscribe housing discrimination on the basis of "familial status," (*i.e.*, discrimination against persons under age 18), but which permit age discrimination in housing reserved for

persons age 55 and older, are invalid because the United States Constitution does not give Congress the power to regulate the rights and duties of private citizens with respect to sale or rental of housing where the regulation is tied to the age of the occupants of the housing, and where the sale or rental occurs within the borders of an individual State.

If these federal provisions are invalid, California's mobilehome age-discrimination provision (Civil Code § 798.76) is invalid, because that provision states that residency in a mobilehome park may be limited based on age if, and only if, "the rule or regulation complies with the federal Fair Housing Act, as amended by Public Law 104-76 [Housing for Older Persons Act of 1995], and implementing regulations." (Civil Code § 798.76)

## ARGUMENT FOR GRANTING CERTIORARI

Congressional regulation of private housing on the basis of the age of its occupants is no more authorized by the Constitution than the providing of a civil remedy for the victims of gender-motivated violence within a State, which the Court held in *United States v. Morrison, supra,* exceeds Congress' constitutional authority, or the proscription of employment discrimination based on age, which the Court also recently held to be beyond Congress' constitutional authority in *Kimel v. Florida Bd. of Regents,* 528 U.S. ____; 120 S.Ct. 631; 145 L.Ed.2d 522 (2000).

Even if such regulation is within Congress' constitutional authority, it is irrational to permit enclaves of private housing where persons under age 55 may be excluded, and therefore the statutory provisions allowing such discrimination violate the equal protection rights of those

under 55 guaranteed by the due process clause of the Fifth Amendment.

And, California's statutory scheme which allows age discrimination in mobilehome housing while prohibiting such discrimination in all other housing violates the equal protection clause of the Fourteenth Amendment.

This Court's review and decision is needed to put an end to statutes which have the ultimate effect of affirmatively permitting age discrimination in housing. For California residents, if the special rule allowing age discrimination in mobilehome housing is eliminated, the State's general proscription against age discrimination in housing can have full force and effect.

## ARGUMENT

### 1

### CONGRESS LACKS CONSTITUTIONAL AUTHORITY TO ENACT LEGISLATION IMPOSING AGE RESTRICTIONS APPLICABLE TO THE PRIVATE SALE OR RENTAL OF HOUSING. THEREFORE, THE PROVISIONS OF THE FAIR HOUSING ACT, AS AMENDED, AUTHORIZING EXCLUSION OF PERSONS UNDER AGE 55 FROM HOUSING ARE INVALID.

The issue before this Court in *United States v. Morrison, supra,* was the constitutionality of a federal statute which provides a civil remedy for the victims of gender

motivated violence. Congress' constitutional authority to enact the provision was asserted by its supporters to exist in the Commerce Clause (Article 1, § 8 of the Constitution) and, alternatively, in the remedial provision of § 5 of the Fourteenth Amendment.

With respect to the Commerce Clause, the Court held that the conduct addressed by the legislation—violence by one individual against another motivated by gender animus—was itself noneconomic, and that the conduct had at most a minimal and tenuous effect on interstate commerce. The Court stated that, "The Constitution requires a distinction between what is truly national and what is truly local [citations]. In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States."

Although the sale or rental of housing is an economic activity, by definition it is a local activity. Real property is immovable, and therefore it cannot be transported across state lines. It is not an instrumentality, channel or good involved in interstate commerce. Its sale, rental and occupancy does not occur as a result of, or as part of, interstate commerce. The fact that some small segment of the population may commute between home and work across state lines does not create a nexus between housing and interstate commerce any closer than the possibility that some rapists may cross state lines to accomplish their attacks, or that potential victims might be deterred from engaging in employment in interstate business through fear of rape. This Court concluded in *Morrison* that those factors did not create a sufficient nexus to interstate commerce to bring the subject matter of gender

motivated violence within the aegis of Congress under the Commerce Clause.

With respect to Congress' remedial power under § 5 of the Fourteenth Amendment, this Court held that any assumed bias in various state justice systems against victims of gender-motivated violence, which might result in insufficient investigation and prosecution of gender-motivated crime, did not justify Congressional intervention as a means to ensure equal protection of the law by the victims.

The Court stated, in part,

> . . . [The] language and purpose of the Fourteenth Amendment place certain limitations on the manner in which Congress may attack discriminatory conduct. These limitations are necessary to prevent the Fourteenth Amendment from obliterating the Framers' carefully crafted balance of power between the States and the National Government. . . . Foremost among these limitations is the time-honored principle that the Fourteenth Amendment, by its very terms, prohibits only state action.

In the *Morrison* case, the conduct for which Congress legislated a remedy is conduct between private citizens. This Court determined that § 5 of the Fourteenth Amendment does not empower Congress to grant such a remedy. That is because a law regulating discrimination between private persons is beyond Congress' § 5 power if it is " 'directed exclusively against the action of private persons, without reference to the laws of the State, or their administration by her officers.' [citation]." (*Morrison, supra*) The Court

applied that principle to the legislation before it, and concluded that the legislation exceeded Congress' authority under § 5. That is because the legislation "is not aimed at proscribing discrimination by officials which the Fourteenth Amendment might not itself proscribe; it is directed not at any State or state actor, but at individuals who have committed criminal acts motivated by gender bias."

Here, the Fair Housing Act, as amended by the 1988 and 1995 Acts, regulates age discrimination in the sale or rental of housing in transactions between private persons (42 United States Code § 3603(a)(2)). Under the *Morrison* analysis, that regulation is not authorized under § 5 of the Fourteenth Amendment.

Moreover, age, unlike race, is not a suspect classification under the Equal Protection Clause (*Kimel v. Florida Bd. of Regents, supra)*. Therefore, under the "congruence and proportionality" test, age discrimination does not require or authorize Congressional action under § 5 for its regulation (*Kimel)*.

Thus, the provisions of the Fair Housing Amendments Act of 1988, as amended by the Housing For Older Persons Act of 1995, which on the one hand prohibit housing discrimination based on "familial status," but which on the other hand permit housing discrimination against persons under age 55, regulate private conduct on a subject for which Congressional intervention is not authorized by §5 of the Fourteenth Amendment.

Certainly, if the prospect that the states will not adequately afford civil remedies to victims of a social evil such as rape did not authorize Congress to enact remedial legislation pursuant to § 5 of the Fourteenth Amendment,

surely any perceived social benefit from permitting the creation of housing enclaves for persons age 55 and older did not give Congress the power pursuant to § 5 to enact the "housing for older persons" provisions of the Fair Housing Amendments Act of 1988 (42 United States Code § 3607(b)(2)), and the subsequent Housing for Older Persons Act of 1995 (Public Law 104-76).

The majority and concurring opinions in *Morrison* make clear that Congress does not have unlimited power to deal with each and every social evil its members perceive. The United States still is a republic comprised of 50 sovereign States, and the Constitution reserves for the States all powers not given by it to the federal government. The power to enact legislation regulating private citizens' use of age as a criteria in selling or renting housing, and in particular, affirmatively permitting the creating of restricted housing for the exclusive occupancy by persons over a certain age, is not vested in Congress by the Constitution. Therefore, the "housing for older persons" legislation which is the subject of this case must fall.

The Court is urged to grant this petition for a writ of certiorari, and ultimately to adjudicate that the legislation is not constitutionally valid.

2.

**CONGRESSIONAL LEGISLATION WHICH ALLOWS ORDINARY HOUSING TO BE RESERVED EXCLUSIVELY FOR PERSONS AGE 55 AND OLDER IMPERMISSIBLY DISCRIMINATES AGAINST PERSONS UNDER AGE 55, DENYING THEM EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE FIFTH AMENDMENT.**

The "housing for older persons" provisions added to the Fair Housing Act by the Fair Housing Amendments Act of 1988 (42 United States Code, § 3607(b)(2)(C)) permitted housing developments to exclude persons under age 55 only if the housing was accompanied by "significant facilities and services specifically designed to meet the physical or social needs of older persons." That qualification was deleted by the Housing for Older Persons Act of 1995 (Public Law 104-76). Now, all that is needed in order to exclude persons under 55 from housing is for the "housing facility or community" to declare that it is reserved for those age 55 and older. (A mobilehome site constitutes "housing" for purposes of the Fair Housing Act, *United States v. Grooms*, 348 F.Supp. 1130, 1133 (USDC MD Fla. 1972)).

A law which permits exclusion of persons under a certain age from housing is the antithesis of a law ensuring ***fair*** housing for all persons. Therefore, it denies equal protection of the fair housing law to those who are excluded from the housing.

Under the Fifth Amendment, Congress is precluded from enacting any law which denies citizens of property

without due process of law, and any classification which would be invalid under the Equal Protection Clause of the Fourteenth Amendment is inconsistent with the due process requirement of the Fifth Amendment (*Johnson v. Robison,* 415 U.S. 361, 364; 95 S.Ct. 1160, 1164; 39 L.Ed.2d 389 (1974); *Weinberger v. Weisenfeld,* 420 U.S. 636, 638; 95 S.Ct. 1225; 43 L.Ed.2d 514 (1975).

Assuming that Congress had constitutional authority to enact the "housing for older persons" legislation in the first place, the legislation nevertheless is invalid because it is an unconstitutional deprivation of equal protection to persons under age 55, such as Mr. Taylor.

For discrimination on the basis of age to survive an equal protection challenge, the age classification must be rationally related to a legitimate governmental interest (*Kimel v. Florida Bd. Of Regents, supra,* 120 S.Ct. 631, 645-47 (2000). The age classification here—exclusion of persons under age 55 from ordinary housing—is not rationally related to any legitimate governmental interest.

The Ninth Circuit opinion here states that the government has a legitimate interest in preserving and promoting housing for older persons, but the court did not explain why it is beneficial to society as a whole for persons above a certain age (here, age 55) to have housing reserved for themselves, particularly when there is a severe shortage of housing, especially affordable housing, throughout the nation.

To the extent that some older persons may require or benefit from special housing designed to meet specific social or physical needs, a law permitting such housing to be reserved exclusively for them might be rationally related to a

legitimate interest. But that does not mean that it is rational to permit blanket exclusion of all persons below a certain age from ordinary housing.

Moreover, age 55 is ***not*** a senior citizen age. Persons age 55 are not elderly. Full Social Security retirement benefits are not payable until age 65 (42 United States Code § 416(1)(A)), and the age will increase to 67 after the year 2000 (42 United States Code § 416(1)(E)). Medicare benefits are not available until age 65 (42 United States Code § 1395o(2)). Retirement distributions from qualified pension and profit sharing plans, and IRAs, are not available without penalty until age 59½ (26 United States Code § 72(T)(2)(A)(i) and 408(d)(1)).

The Ninth Circuit opinion attempts to rationalize the preferential treatment of 55 year olds on the basis that some persons retire early, and on the basis that setting the exclusion age at 55 accommodates those who desire to relocate prior to reaching retirement or very old age, when moving might be more difficult (App A, pp. 8a-9a). But that does not mean that 55 is a senior citizen age. ***If*** it is considered good social policy to allow senior citizens to keep non-senior citizens out of their housing communities, it is not rational to extend that policy to a group of persons who in today's culture are considered youthful, vigorous, and not ready for retirement—those age 55 to 65.

But, the important point here is that ordinary housing should not be reserved for ***any*** age group, whether it is age 55 and older, or age 62 and older, or age 65 and older. Barring persons below a certain age limit, wherever the limit is set, impermissibly denies the excluded persons equal protection of the law. The federal "housing for older persons" legislation

therefore should be stricken as violative of the equal protection right afforded by the Fifth Amendment.

3.

## CALIFORNIA STATUTES WHICH PERMIT AGE DISCRIMINATION IN MOBILEHOME HOUSING WHILE PROHIBITING IT IN ALL OTHER FORMS OF ORDINARY HOUSING VIOLATE THE FOURTEENTH AMENDMENT.

Mr. Taylor's challenge to the California statutory scheme which totally prohibits age discrimination in all forms of ordinary housing, but which at the same time permits age discrimination against persons under age 55 in mobilehome housing, directly brings into play the Equal Protection Clause of the Fourteenth Amendment.

"Under any equal protection test, 'the classification must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation . . .' [citation]." (*Fillilove v. Kreps*, 584 F.2d 600, 603 (2nd Cir. 1978).

In testing a state statute for an equal protection violation, the courts are less deferential to the legislation than in testing a federal statute (*Ibid.* p. 604).

Section 51.2 of the California Civil Code provides that the overall anti-discrimination provisions of the Unruh Civil Rights Act "shall be construed to prohibit a business establishment from discriminating in the sale or rental of

housing based upon age." That provision is not limited to prohibiting discrimination in housing with respect to children and families with children. It prohibits discrimination against persons of all ages.

California's Mobilehome Residency Law, however, permits age discrimination is mobilehome housing, so long as the age restriction complies with the federal Fair Housing Act's age criteria (Civil Code § 798.76).

That creates a double standard—age discrimination is flatly prohibited in all ordinary housing except mobilehome housing; but, age discrimination in mobilehome housing is permitted if a mobilehome park wishes to adopt a rule restricting residency to persons age 55 and older.

No rational basis exists for that double standard.

The California Supreme Court, in *Schmidt v. Superior Court* (1989) 48 Cal.3d 370, 386-387 [256 Cal.Rptr. 750; 769 P.2d 932], offered only two justifications for allowing age discrimination against children in mobilehome parks while prohibiting it in other types of housing. One is "the generally greater percentage of older residents" in mobilehome parks. The other is "the smaller size of the units, the more substantial potential lack of privacy and the greater expense that might have to be incurred in rendering such a park safe for children residents . . . ." (48 Cal.3d, p. 390)

The fact that mobilehome parks have been successful in excluding persons under age 55, thereby raising the number of older persons residing is the parks, does not make age discrimination in mobilehome parks right, rational, legitimate or socially acceptable. At one time in America's history, many neighborhoods were restricted to and occupied

solely by Caucasians and gentiles, but that fact did not justify or validate laws which permitted exclusion of persons of other races and religions.

With respect to the physical characteristics of mobilehomes mentioned by the court in *Schmidt*, mobilehomes are not necessarily smaller than apartments or condominiums. One bedroom and studio apartments are not uncommon, nor are studio and one bedroom condominiums. Mobilehomes vary in size from one bedroom to three or more bedrooms with two or more bathrooms. With respect to privacy, in apartment buildings units are usually separated by single walls, where sounds are easily transmitted, whereas each mobilehome is a separate structure, physically separated from adjacent mobilehomes. Condominiums in multi-storied buildings are not physically different from apartments.

With respect to safety of children, apartment buildings and condominium complexes are no more suitable for families with children than mobilehome parks. In a typical multi-story apartment or condominium building, individual units are accessed through interior hallways, not through front yards and entries. Play areas in such developments frequently are non existent, and children are left to play in streets, parking lots, and distant playgrounds.

Thus, the factors relied upon by the court in *Schmidt* as justification for allowing age discrimination in mobilehome housing simply do not rationally support the court's conclusion.

The Ninth Circuit, in its opinion here, reached for another justification for excepting mobilehomes from the blanket age discrimination proscription of the Unruh Act:

"Additionally, mobile home parks are particularly adaptable to inexpensive land away from schools and major economic centers. The parks can be built on minimally improved land, without producing sufficient revenue to make them a viable occupant of more expensive real estate." (App., page 10a)

First of all, those assumed facts are not contained within the allegations of the complaint, nor within anything of which the courts below were asked to take judicial notice. Thus, they are not something which can support dismissal of the complaint under Rule 12(b)(6). With respect to the Rancho Santa Barbara mobilehome park, the complaint alleges that it is located at 333 Old Mill Road in Santa Barbara, California (Excerpts of Record, page 2), which certainly is not "away from schools and major economic centers," and certainly not on "minimally improved land."

More importantly, however, age discrimination cannot be justified on the basis of economics or geographic location. Studio and one bedroom apartments, and similar sized condominiums, are less expensive than single family homes, but Civil Code § 51.2 prohibits age discrimination in both types of housing. Likewise, age discrimination is prohibited in rural areas the same as in urban areas with respect to all housing other than mobilehomes. The court's reasoning does not survive critical analysis.

California Civil Code § 51.2 codifies the State's policy that persons of all ages shall have equal access to housing. Equal protection demands that the policy be applied to all forms of ordinary housing, including mobilehome housing.

The mobilehome exception to California's proscription against age discrimination in housing violates the Equal Protection Clause of the Fourteenth Amendment. This Court

is urged to issue a writ of certiorari, and to invalidate the statute allowing that exception, Civil Code § 798.76

## CONCLUSION

Contrary to what many United States Senators and Congressional Representatives may perceive, Congress' power to enact social legislation is far from unlimited, as recently reaffirmed by this Court in *Morrison*.

Congress' imposition of age restrictions governing the sale or rental of housing, through the Fair Housing Amendments Act of 1988 and the Housing For Older Persons Act of 1995, exceeds its constitutional authority. Therefore, those restrictions are invalid.

Because the provision of California law which permits age discrimination in mobilehome housing (Civil Code § 798.76) is specifically based solely upon the invalid federal legislation, it too is invalid and must fall.

Even if Congress had constitutional authority to enact its age-based housing restrictions, the provisions allowing exclusion of persons under age 55 from housing are invalid under the Fifth Amendment to the Constitution.

By the same token, the California statutory scheme which allows age discrimination in mobilehome housing, but not in any other form of ordinary housing, is invalid under the Fourteenth Amendment.

These are significant issues which deserve the Court's consideration, and Mr. Taylor entreats the Court to grant his

petition for writ of certiorari so that the Court may address them.

/s/_____
Robert O. Angle,
*Counsel of Record*

ANGLE, CARLSON, GOLDRICK
& ROBERTS
200 East Carrillo Street, Suite 310
Santa Barbara, CA 93101
Telephone (805) 963-7400
Telefax (805) 963-7610

## APPENDIX A

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

[Filed March 21, 2000]

No. 98-56204

MICHAEL SHAWN TAYLOR,
*Plaintiff-Appellant*,

v.

RANCHO SANTA BARBARA, a California General Partnership, and its general partners; Cuervo Corp., a California Corporation; KENNETH E. ECKERT, and LORENA J. ECKERT Co-Trustees of the Lorena J. Eckert Trust; WARREN J. HOWLAND, Trustee of the Warren J. Howland Trust; MARGARET S. HOWLAND and FREDERICK RICE, Trustee of the Frederick Rice Trust,
*Defendants-Appellees*.

Appeal from the United States District Court
for the Central District of California

**OPINION**

Before: James R. Browning, Alfred T. Goodwin, and Susan P. Graber, Circuit Judges.

GOODWIN, Circuit Judge:

Michael Shawn Taylor, age 41, bought a mobile home that was located in a mobile home park, which rents the lot under the privately owned unit to qualified renters. When Taylor learned that spaces would not be rented to persons under 55 years of age, he sued in the district court to challenge as unconstitutional the state and federal statutes that permit park operators to enforce age restrictions. He appeals the Federal Rule of Civil Procedure 12(b)(6) dismissal of his claim. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The federal Fair Housing Act and California's Mobilehome Residency Law permit otherwise qualified mobile home parks to refuse to rent to tenants aged under 55 years. Apparently for the first time in this circuit, these laws are challenged as inconsistent with the equal protection accretions to the Fifth Amendment, for 42 U.S.C. § 3607 (b)(2)(C), and the Fourteenth Amendment, for California Civil Code § 798.76.

## I. BACKGROUND

As apparently is common among mobile home parks, Rancho Santa Barbara rents to mobile home owners the spaces upon which the homes rest. Taylor found and purchased a home to his liking, and then applied for a rental agreement. His application was rejected because of his age. As published in park rules, Rancho Santa Barbara restricts occupancy to persons 55 years old or older. Taylor found that he had 14 years to wait before he could move into his unit.

The parties agree that the park's age rule is permitted by both federal and state statutes. The Federal Housing Act (FHA), as amended by the Fair Housing Amendments Act of 1988 (FHAA) and the Housing for Older Persons Act (HOPA), permits landlords to restrict occupancy to persons 55 years of age or older. *See* 42 U.S.C. § 3607(b)(2)(C). California's Mobilehome Residency Law (MRL) authorizes management of a mobile home park to limit residence on the basis of age, provided that the age restriction complies with the FHA. *See* Cal. Civ. Code § 798.76. The MRL operates as an exception to California's general proscription of age discrimination in housing. *See* Cal. Civ. Code §§ 51.2, 51.3(c)(4).

Taylor argues that the MRL violates the Fourteenth Amendment's Equal Protection Clause and that the FHA, as amended by HOPA, violates the Fifth Amendment's Due Process Clause, which applies equal protection standards to the federal government. *See Weinberger v. Weisenfeld,* 420 U.S. 636, 638 (1975) (holding that the approach to Fifth Amendment equal protection claims is "precisely the same" as under Fourteenth Amendment). The district court held that

both statutory schemes survived equal protection challenge as founded upon rational policy decisions by the respective legislative bodies, and granted the defendant's motion to dismiss for failure to state a claim under Rule 12(b)(6).

We review the correctness of the judgment as a question of law. *See Johnson v. Knowles,* 113 F.3d 1114, 1117 (9th Cir. 1997). The facts alleged in the complaint are deemed admitted and true for purposes of the appeal. *See id.*

## II. DISCUSSION

### A. Rational-Basis Review Applies

We apply rational-basis review to the challenged legislation. Age classifications are not constitutionally suspect, and legislative distinctions based upon age warrant only traditional rational-basis review. *See, e.g., Kimel v. Florida Bd. of Regents,* 120 S.Ct. 631, 645-47 (2000); *United States v. Jenkins,* 734 F.2d 1322, 1327 (9th Cir. 1982) (upholding different treatment accorded youth offenders). Furthermore, Taylor alleges no fundamental right that is infringed by the challenged legislation.

Applying rational-basis review, the classification survives equal protection challenge if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. *See Heller v. Doe,* 509 U.S. 312, 320 (1993). Under rational-basis review, a legislature "need not actually articulate at any time the purpose or rationale supporting its classification. Instead, a classification must be upheld if there is any reasonably conceivable set of facts that could provide a rational-basis for

the classification." *Id.* (internal quotation marks and string citations omitted). Courts reviewing for a rational basis must accept a legislature's generalizations even when there is an imperfect fit between means and ends; "mathematical nicety" is not required, *Id.* at 321.

**B. The Federal Fair Housing Act (As Amended)**

In 1968, Congress enacted the FHA to prohibit home sellers and landlords from discriminating on the basis of race, religion, national origin, or (later) gender. *See* Title VIII of Pub. L. 90-284 (Apr. 11, 1968); 42 U.S.C. §§ 3601 et seq. In 1988, Congress enacted the FHAA, which amended the FHA and prohibited housing discrimination on the basis of familial status, but Congress provided an exemption for retirement housing communities. Under the FHAA, a housing community could discriminate on the basis of familial status if (1) 80% of the dwellings were occupied by at least one person age 55 or older *and* the community provided "significant services and facilities" for older persons; *or* if (2) the housing community was reserved exclusively (100%) for persons age 62 or older. *See* 42 U.S.C. § 3607(b)(1), (2).

The "significant services and facilities" requirement sparked controversy and litigation in the years following the FHAA's enactment in 1988. The Department of Housing and Urban Development issued no fewer than three regulatory attempts to clarify the clause, but the requirement continued to generate public scrutiny. The central criticism was that the exemption for older persons' housing had "proved difficult to implement" and resulted in numerous lawsuits and administrative complaints. *Covey v. Hollydale Mobile Home Estates,* 116 F.3d 830, 833 (9th Cir. 1997).

Subsequently, Congress by a 424 to 5 margin enacted HOPA and eliminated the "significant facilities and services" requirement. *See* Pub.L. No. 104-76, 109 Stat. 787 (Dec. 28, 1995). Under the current version of the FHA, as amended by HOPA, a community can qualify for the housing-for-older-persons exemption provided that "at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older." 42 U.S.C. § 3607(b)(2)(C)(i) (1996). Rancho Santa Barbara qualifies for the exemption as currently enacted. For this appeal, we will assume that the park would not have qualified for the pre-HOPA exemption, because Taylor alleges that the park offers no special facilities or services.

HOPA's elimination of the "significant services and facilities" requirement was rationally related to the government's legitimate interest in reducing confusion regarding the FHA and its housing-for-older-persons exemption. As stated by Representative Canady, "[t]he term 'significant facilities and services' has been a source of confusion and litigation since the passage of the [FHAA]." 141 Cong. Rec. H14966-02 (Dec. 18, 1995). Representative Brown echoed this concern: "[T]he 'significant facilities and services' standard has . . . been a pain in the neck because it has been vague, it has been difficult, and it has spawned litigation and created confusion." 141 Cong. Rec. S 18063-01 at *S 18064 (Dec. 6, 1995). Congress reasonably concluded that eliminating the "significant facilities and services" requirement would make the FHA easier to administer and easier to follow. *Cf: Covey,* 116 F.3d at 833 (noting that requirement "proved difficult to implement").

The housing-for-older-persons exemption itself, as it stands amended by HOPA, likewise survives equal protection challenge. Congress intended the FHAA to protect families with children while still "fully protect[ing] the rights of senior citizens who live in retirement communities, and . . . allow[ing] those communities to exclude families with children if they so choose." 134 Cong. Rec. H4607 (daily ed. June 22, 1988). Two courts outside this circuit have upheld the pre-HOPA housing-for-older-persons exemption. *See Seniors Civil Liberties Coalition v. Kemp*, 965 F.2d 1030, 1036 (11th Cir. 1992), (holding that exemption did not violate due process rights of aged); *Park Place Home Brokers v. P-K Mobile Home Park*, 773 F.Supp. 46 (N.D. Ohio 1991) (holding that exemption did not violate equal protection rights of landowners). With the enactment of HOPA, Congress reasserted its intent to protect housing for older persons by broadening and simplifying the housing-for-older-persons exemption.

The housing-for-older-persons exemption as amended bears a rational relationship to the government's legitimate interest in preserving and promoting housing for older persons. Congress reasonably determined that older persons have a particular need for an affordable "safe, supportive environment." 141 Cong. Rec. S18063-01 (Dec. 6, 1995) (statement of Rep. Brown). Many live on fixed incomes, have particular health needs, and may no longer need a home big enough for a large family.

The housing-for-older-persons exemption permits exempted communities to reduce costs. The exemption permits communities to exist in areas less appropriate or desirable for younger people. Sites typically lack schools or

day care facilities. Parks can thrive relatively far from employment centers. The land can be acquired at low cost and often might otherwise go underused. Senator Einstein addressed related matters during the debates leading up to the enactment of HOPA.

> In the city of Hemet, 50 percent of its housing is 55-and-over communities. Removing the seniors-only status and requiring these communities to absorb families with children will result in a dramatic shortage of classroom space, and [affect] the tax-base. Demographics are such that the financing of new school construction, in a city that was planned as a retirement community, would not be possible.

141 Cong. Rec. S18063-01 at *S18066.

The exemption also allows exempted housing communities to offer facilities more appropriate for older persons than for children. For example, communities can devote fewer resources to ensure quiet privacy and child safety. They can build thinner walls, smaller units, and tinier yards. Conversely, communities can devote *more* resources to facilities and services for older persons. Even though the FHA does not *require* such facilities, the exemption might rationally promote enhanced services.

That Congress drew the line at age 55 – rather than at age 35 or 65 or 67 – does not violate equal protection. The selection of age 55 accommodates those who retire early and those who desire to relocate prior to reaching retirement or

very old age, when moving might be more difficult. Furthermore, even though the selection of age 55 – or any age – might be over and underinclusive on the margin, legislatures are given leeway under rational-basis review to engage in such line drawing. In *Massachusetts Bd. of Retirement v. Murgia,* 427 U.S. 307, 312-23, 316 (1976), the selection of age 50 for mandatory retirement of police officers survived rationality review, even though some officers older than 50 were in better health than some officers younger than 50. That Taylor could construct an alternative statute, one that he would prefer, or that would more narrowly fit the discussed purposes, does not mean that the statute as Congress drafted it is unconstitutional.

**C. California's Mobilehome Residency Law**

California's MRL also survives rationality review. The MRL operates as an exception to California's general proscription of age discrimination in housing and permits a mobile home park to restrict residence on the basis of age, provided that the restriction "complies with the federal Fair Housing Act." Cal. Civ. Code § 798.76 (MRL); *see also* Cal. Civ. Code §§ 51.2, 51.3(c)(4) (general proscription of age discrimination).

Taylor contends that the California scheme is even more arbitrary than the federal scheme – and thus even more clearly violative of equal protection – because it allows discrimination against those under 55 in mobile home housing while prohibiting the same discrimination in all other forms of housing. We reject this claim, because the MRL exemption of mobile home parks is rationally related to the

legitimate interest of promoting affordable housing for older persons.

The MRL creates a special benefit for older people in mobile home parks – the right to exclude young purchasers. By providing this benefit, California conceivably promotes the supply of mobile home parks for older persons. As discussed above with respect to older persons' housing in general, the exemption allows mobile homes to exist in more remote areas and be tailored towards the needs of older persons.

Mobile home parks offer several distinct characteristics that make such housing a particularly desirable option for many older people. In *Schmidt v. Superior Court*, 48 Cal.3d 370 (1989), the California Supreme Court relied upon the distinguishing features of mobile homes and upheld the MRL against equal protection challenge brought by young would-be purchasers wishing to live in an adults-only mobile home park.

Mobile home parks offer small units sitting on small lots, necessarily offering limited privacy and limited room for children. The *Schmidt* court also recognized "the greater expense that might have to be incurred in rendering such a park safe for children residents." *Id.* at 390. Additionally, mobile home parks are particularly adaptable to inexpensive land away from schools and major economic centers. The parks can be built on minimally improved land, without producing sufficient revenue to make them a viable occupant of more expensive real estate.

Furthermore, mobile homes as a class usually are less expensive than other types of housing, which makes them

marketable to persons living on fixed incomes during, or in preparation for, retirement. According to Taylor's own submissions, a two-bedroom mobile home in the area around Santa Barbara sells for roughly $50,000, whereas a comparable two-bedroom condominium in the same area sells for roughly three times as much. Providing a special housing benefit to older persons is neither irrational nor illegitimate.

According to a survey taken shortly before passage of the FHAA, 72 percent of mobile home park residents in California were age 55 or older. *See* Cal. Dept. of Housing & Community Development, Mobilehome Parks in California: A Survey of Mobilehome Park Owners Pursuant to SB 1835 p. 31 (Feb. 1986); *Schmidt,* 48 Cal.3d at 390. Those demographics support the contention that mobile home parks offer distinguishing features making them particularly attractive to older people. California did not act arbitrarily or irrationally by giving disparate treatment to mobile home parks for older persons.

## III. CONCLUSION

We hold that the challenged legislative schemes do not deprive the plaintiff of equal protection under the laws, because the legislative schemes are rationally related to legitimate state interests. Thus, the plaintiff fails to state a constitutional claim upon which relief can be granted. Accordingly, we AFFIRM.

## APPENDIX B

## UNITED STATES DISTRICT COURT
## FOR THE CENTAL DISTRICT OF CALIFORNIA

[Filed June 19, 1998]

No. CV 98-1422 CBM

MICHAEL SHAWN TAYLOR,
*Plaintiff*,

v.

RANCHO SANTA BARBARA,
a California General Partnership,
et al.,
*Defendants*.

## [AMENDED] ORDER GRANTING DEFENDANT'S 12(b)(6) MOTION TO DISMISS

### I. INTRODUCTION

The matter before the Court is Defendant RANCHO SANTA BARBARA, et al.'s Motion To Dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). On June 1, 1998, the parties came before the Court, the Honorable Consuelo B. Marshall,

United States District Court, presiding. Upon consideration of the papers and the arguments of counsel, the Court issues the following Order GRANTING Defendant's Motion.

## II. BACKGROUND

Plaintiff purchased a mobile home on space #32 in a mobile home park owned by Rancho Santa Barbara. In order to occupy the mobile home, Plaintiff was required to rent space #32 from the Defendant. Defendant rejected Plaintiff's rental application because the Park's rules and regulations limit residency to "adult-only/housing for older persons" with a minimum age of 55. Plaintiff is 41 years of age. Defendant drafted this policy in reliance on California's Civil Code §798.76[1] and the Federal Fair Housing Act, 42 U.S.C. §3607(b)(2)(C),[2] which provide statutory exemptions from age and familial discrimination prohibitions for facilities qualifying as "senior housing." Plaintiff filed this action on March 2, 1998 contending that the state and federal laws that

---

[1] California's Mobilehome Residency Law states that "The management may require that a prospective purchaser comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulation complies with the federal Fair Housing Act, as amended by Public Law 104-76, and implementing regulations."

[2] The relevant portion of the FHA provides that "(b) . . . nor does any provision in this title regarding familial status apply with respect to housing for older persons" means housing - (C) intended and operated for occupancy by persons 55 years of age or older, and - (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age.

permit such a policy impermissibly discriminate on the basis of age and are therefore unconstitutional under the Fifth and Fourteenth Amendments.

## III. ANALYSIS

### A. Standard for 12(b)(6) Dismissal

A motion to dismiss may not be granted unless it appears beyond doubt that plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99 (1957); Woodrum v. Woodward County, Okla., 866 F.2d 1121, 1124 (9th Cir. 1989). The court must therefore presume all allegations in the complaint to be true, and must resolve all inferences in favor of the non-moving party. Woodrum, 866 F.2d at 1124.

A court may take judicial notice of materials of matters of public record outside the pleadings, and doing so does not convert a Rule 12(b)(6) motion to one for summary judgment. MGIC Indem Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986). In the present matter, the Court took judicial notice of excerpts from the Congressional Record and from transcribed verbal testimony from the House and Senate regarding the "Housing For Older Persons Amendment of 1995" (HR660), amending the Fair Housing Act, 42 U.S.C. §3607. "The use of judicially noticeable facts to establish a rational basis for economic legislation is as old as the rational basis standard itself." Traweek v. City and County of San Francisco, 659 F. Supp. 1012, 1015 (N.D. Cal. 1984).

### B. Plaintiff's Constitutional Challenge to the Fair Housing Act, 42 U.S.C. §3607(b)(2)(C)

The federal Fair Housing Act, as amended by Public Law 104-76, permits discrimination in housing on the basis of age if the housing is "intended for and solely occupied by persons 62 years of age or older," or if the housing is intended for and operated for occupancy by persons "55 years of age or older . . . and . . . at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older, . . ." 42 U.S.C. §3607(b)(2)(C). Public Law 104-76 amended the statute by deleting the requirement from §3607 that senior housing for those 55 years old and older demonstrate "the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons" to qualify for the exemption. 42 U.S.C. §3607(b)(2)(C) (West Supp. 1995). Plaintiff challenges the Constitutionality of the amendment and of the underlying statutory exemption, alleging that these provisions effect impermissible age discrimination in violation of due process and equal protection rights guaranteed by the Fifth Amendment.

#### 1. Standard For Rational Basis Review

Although the Fourteenth Amendment expressly applies only to the states, the protections afforded thereunder apply equally to federal legislation, albeit through the Due Process Clause of the Fifth Amendment. Cecelia Packing Corp. v. U.S. Dept. of Agriculture, 10 F.3d 616, 623-24 (9th Cir. 1993). Absent the implication of a fundamental right or the use of an inherently suspect classification, disparate treatment violates the Equal Protection Clause only if it has no

"reasonable" or "rational" basis. The Supreme Court has declined to extend heightened review to differential treatment based on age or housing. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 442 (1985); Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976). Therefore, to state a Constitutional claim for age discrimination under either the Fifth or Fourteenth amendment, Plaintiff must allege facts sufficient to establish that §3607 of the Fair Housing Act does not rationally further a governmental legitimate purpose.

Plaintiff contends that Congress' chosen age floor for senior housing is arbitrary in that 55-yr-olds are not seniors. Plaintiffs refer to several benefits commonly associated with "senior citizens" that are not available to people at age fifty-five. (e.g. social security benefits, pension distributions). However, State and Federal legislatures are permitted to make imprecise distinctions based on age to effect an array of governmental objectives, and what constitutes "senior" is a context-specific inquiry. For example, in Murgia, the Supreme Court case that set the standard for Constitutional age discrimination claims, the Court rejected an equal protection challenge to a Massachusetts law requiring uniformed police to retire at age fifty. Murgia, 427 U.S. at 312-314. The Court noted that the relaxed standard of the rational basis test reflects the Court's awareness that the line-drawing is a peculiarly legislative task and an unavoidable one, and therefore, absent a suspect or intermediate classification, such action is presumed to be valid. Id., at 314; See also Lamb v. Scripps College, 627 F.2d 1015, 1018-19 (9th Cir. 1980). More recently the Supreme Court has emphasized that "rational-basis review in equal protection analysis 'is not a license for courts to judge the wisdom,

fairness, or logic of legislative choices.'" FCC v. Beach Communications, Inc. 508 U.S. 307, 313 (1993).

**2. Legislative Record of Fair Housing Act Amendment**

Congress had a legitimate governmental purpose for amending this provision, namely protecting the supply of senior housing. HUD's exemption for older person's housing had "proved difficult to implement and was the source of numerous lawsuits and administrative complaints." Covey v. Hollydale Mobile home Estates, 116 F.3d 830, 833 (9th Cir. 1997). After conducting extensive hearings, Congress determined that the language of §3607(b)(2)(B) was threatening the availability of such housing with its restrictive definition of what constitutes retirement or older housing. See e.g. 141 Cong. Rec. S18063, 18064 (daily ed. Dec. 6, 1995); 141 Cong. Rec. H14966-02, 14967 (First Session, Dec. 18, 1995). In response to the perceived interpretive difficulty, Congress deleted the requirement that a facility provide "significant facilities and services" to qualify for the exemption. Pub. L. No. 104-76, 109 Stat. 787 (Dec. 28, 1995) (codified at 42 U.S.C. §3607(b)(2)(C) (1996)). This provision of the FHA, as amended, now provides that a facility qualifies for the "55 or older" exemption if (i) "at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older, . . ." and (ii) the facility publishes "policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older." 42 U.S.C. §3607(b)(2)(C).

"It is well settled that a benefit can be extended to a class such as senior citizens, consistent with the mandates of

the Due Process and Equal Protection clauses, as long as the benefit is rationally related to the achievement of a legitimate state objective." Gillead v. Fordham Hill Owners' Corp, 601 F. Supp 530 (citing Richardson v. Belcher, 404 U.S. 78, 81082 (1971)). Under this standard this Court finds that the benefit extended here, namely – an exemption from the non-discrimination mandate of the Fair Housing Act – is rationally related to the legitimate government objective of preserving the availability of senior housing.

### C. Plaintiffs Constitutional Challenge To Cal. Civil Code §798.76

California's Mobilehome Residency Law is a derivative of the Federal Housing Act, allowing mobile home parks to enact regulations and policies that limit residency based on age, "provided that the rule or regulation complies with the federal Fair Housing Act." Cal. Civ. Code §798.76. Plaintiff alleges that this state statue violates his right to Equal Protection guaranteed by the Fourteenth Amendment. The legal standard for analyzing Plaintiff's Fourteenth amendment claim is the same as this Court's previous analysis under the Fifth Amendment.

Plaintiff asserts that California's law is even more arbitrary than the federal law because it allows discrimination against those under 55 in mobile home housing while prohibiting the same discrimination in all other forms of housing. The California Supreme Court has explained this discrepancy by referring to: (1) the larger percentage of older residents in mobile home parks, (around 72% of all residents) and (2) the smaller units, lack of privacy, and difficulty and expense involved to render a park safe for children. Schmidt

v. Superior Court, 48 Cal.3d 370, 390 (1989). Such a classification cannot "run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." Heller v. Doe, 509 U.S. 312, 320 (1993). Further, the California legislature need not actually have articulated the purpose or rationale supporting this classification as long as there is a "reasonably conceivable" set of facts that could establish a rational basis for the distinction. Id. "A classification does not fail rational-basis review because it 'is not made with mathematical nicety or because in practice it results in some inequality.'" Dandridge v. Williams, 397 U.S. 471, 485, (1970) (quoting Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911).

California does appear to have a double standard in effect; however, given the lenient rational basis standard, the justifications set out by Schmidt supply a rational basis for this exception to California's general prohibition of housing discrimination. Even assuming the facts as plaintiffs alleges are true, Plaintiff fails to state a Fourteenth Amendment Claim upon which relief can be granted.

Based on the foregoing, the Court GRANTS Defendant Rancho Santa Barbara's Motion to Dismiss the Complaint For Failure to state a constitutional violation of either the Fifth or Fourteenth Amendment for which relief may be granted.

IT IS SO ORDERED.

DATED: 6/19/98

/s/_____
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**FOR THE CENTAL DISTRICT OF CALIFORNIA**

[Filed June 19, 1998]

No. CV 98-1422 CBM

MICHAEL SHAWN TAYLOR,
*Plaintiff*,

v.

RANCHO SANTA BARBARA,
a California General Partnership,
et al.,
*Defendants*.

**[AMENDED] JUDGMENT**
**[FRCP 12(b)(6), 58]**

The Motion of Defendant RANCHO SANTA BARBARA, et al.'s to Dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6) came on regularly before this Court, the Honorable Consuelo B. Marshall, United States District Court, presiding, on June 1, 1998.

Upon consideration of the moving and opposition papers, the arguments of counsel, and all other matters presented to the court. It is hereby Ordered, Adjudicated and Decreed that Plaintiffs complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

DATED: 6/19/98

/s/_____
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

## APPENDIX C

## 42 USCS § 3603

**§ 3603. Effective dates of certain prohibitions**

(a) **Application to certain described dwellings.** Subject to the provisions of subsection (b) and section 807 [42 USCS § 3607], the prohibitions against discrimination in the sale or rental of housing set forth in section 804 [42 USCS § 3604] shall apply:

(1) Upon enactment of this title [enacted April 11, 1968], to —

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title [enacted April 11, 1968];

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title [enacted April 11, 1968]: Provided, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by

virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State of local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

**(b) Exemptions.** Nothing in section 804 [42 USCS § 3604] (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any time: Provided further That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses

at any one time: Provided further, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title [42 USCS § 3604(c)]; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarter occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

**(c) Business of selling or renting dwellings defined.** For the purpose of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has within the preceding twelve months, participated as agent, other than in the sale of own personal residence in providing sales or rental

facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designated or intended for occupancy by, or occupied by, five or more families.

## 42 USCS § 3604

**§ 3604. Discrimination in the sale or rental of housing and other prohibited practices.**

As made applicable by section 803 [42 USCS § 3603] and except as exempted by sections 803(b) and 807 [42 USCS §§ 3603(b), 3607], it shall be unlawful---

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale of rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not

available for inspection, sale or rental when such dwelling is in fact so available.

(e) For profit to induce or attempt to induce any person to sell or rent any dwelling or representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

(f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of–

(A) that buyer or renter

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of–

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes–

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such

person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted,[;]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for the first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988 [enacted Sep. 13, 1988], a failure to design and construct dwellings in such a manner that–

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and with all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped properle (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5) (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and constructions requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing

procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6) (A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary of State or local public agency certified pursuant to section 810(f)(3) of this Act [42 UACS § 3610(f)(3)] to receive and process complaints or otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term "covered multifamily dwellings" means–

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designated and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

## 42 USCS § 3607

**§ 3607. Religious organization or private club exemption**

(a) Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from

limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) (1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing–

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by persons 55 years of age or older; or

(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall–

(I) provide for verification by reliable surveys and affidavits; and

(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C); Provided, That new occupants of such housing meet the age requirements of subsection (2)(B) or (C); or

(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).

(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(5) (A) A person shall not be held personally liable for monetary damages for a violation of

this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For the purpose of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that–

(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.